

Introduced by Senator Margett

February 22, 2005

An act to amend Sections 3063.5 and 11105 of the Penal Code, relating to parole revocation, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 647, as amended, Margett. Parole revocation.

Existing law provides that a parolee or his or her attorney may, in parole revocation proceedings, receive copies of any police, arrest, crime report, or child abuse report, as specified, that pertain to the proceeding. Confidential portions need not be disclosed if the parolee or his or her attorney has been notified of the omission.

This bill would extend these disclosure provisions to parole revocation extension proceedings, and would make criminal history information available as well.

Existing law requires the Department of Justice to furnish various agencies and entities with a person's state criminal history information for certain purposes, as specified.

This bill would expand the list of persons entitled to receive criminal history reports to include the attorney of record in a parole revocation or revocation extension proceeding.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3063.5 of the Penal Code is amended to read:

3063.5. In parole revocation or revocation extension proceedings, a parolee or his or her attorney shall receive a copy of any police, arrest, and crime reports, criminal history information, and child abuse reports made pursuant to Sections 11166 and 11166.2 pertaining to ~~such~~ those proceedings. Portions of those reports containing confidential information need not be disclosed if the parolee or his or her attorney has been notified that confidential information has not been disclosed. Portions of child abuse reports made pursuant to Sections 11166 and 11166.2 containing identifying information relating to the reporter shall not be disclosed. However, the parolee or his or her attorney shall be notified that information relating to the identity of the reporter has not been disclosed.

SEC. 2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of

1 the Statutes of 1974 and Section 432.7 of the Labor Code shall
2 apply:

3 (1) The courts of the state.

4 (2) Peace officers of the state as defined in Section 830.1,
5 subdivisions (a) and (e) of Section 830.2, subdivision (a) of
6 Section 830.3, subdivisions (a) and (b) of Section 830.5, and
7 subdivision (a) of Section 830.31.

8 (3) District attorneys of the state.

9 (4) Prosecuting city attorneys of any city within the state.

10 (5) Probation officers of the state.

11 (6) Parole officers of the state.

12 (7) A public defender or attorney of record when representing
13 a person in proceedings upon a petition for a certificate of
14 rehabilitation and pardon pursuant to Section 4852.08.

15 (8) A public defender or attorney of record when representing
16 a person in a criminal case, or parole revocation or revocation
17 extension proceeding, and if authorized access by statutory or
18 decisional law.

19 (9) Any agency, officer, or official of the state if the criminal
20 history information is required to implement a statute or
21 regulation that expressly refers to specific criminal conduct
22 applicable to the subject person of the state summary criminal
23 history information, and contains requirements or exclusions, or
24 both, expressly based upon that specified criminal conduct. The
25 agency, officer, or official of the state authorized by this
26 paragraph to receive state summary criminal history information
27 may also transmit fingerprint images and related information to
28 the Department of Justice to be transmitted to the Federal Bureau
29 of Investigation.

30 (10) Any city or county, or city and county, or district, or any
31 officer, or official thereof if access is needed in order to assist
32 that agency, officer, or official in fulfilling employment,
33 certification, or licensing duties, and if the access is specifically
34 authorized by the city council, board of supervisors, or governing
35 board of the city, county, or district if the criminal history
36 information is required to implement a statute, ordinance, or
37 regulation that expressly refers to specific criminal conduct
38 applicable to the subject person of the state summary criminal
39 history information, and contains requirements or exclusions, or
40 both, expressly based upon that specified criminal conduct. The

1 city or county, or city and county, or district, or the officer or
2 official thereof authorized by this paragraph may also transmit
3 fingerprint images and related information to the Department of
4 Justice to be transmitted to the Federal Bureau of Investigation.

5 (11) The subject of the state summary criminal history
6 information under procedures established under Article 5
7 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
8 4.

9 (12) Any person or entity when access is expressly authorized
10 by statute if the criminal history information is required to
11 implement a statute or regulation that expressly refers to specific
12 criminal conduct applicable to the subject person of the state
13 summary criminal history information, and contains requirements
14 or exclusions, or both, expressly based upon that specified
15 criminal conduct.

16 (13) Health officers of a city, county, or city and county, or
17 district, when in the performance of their official duties enforcing
18 Section 120175 of the Health and Safety Code.

19 (14) Any managing or supervising correctional officer of a
20 county jail or other county correctional facility.

21 (15) Any humane society, or society for the prevention of
22 cruelty to animals, for the specific purpose of complying with
23 Section 14502 of the Corporations Code for the appointment of
24 level 1 humane officers.

25 (16) Local child support agencies established by Section
26 17304 of the Family Code. When a local child support agency
27 closes a support enforcement case containing summary criminal
28 history information, the agency shall delete or purge from the file
29 and destroy any documents or information concerning or arising
30 from offenses for or of which the parent has been arrested,
31 charged, or convicted, other than for offenses related to the
32 parent's having failed to provide support for minor children,
33 consistent with the requirements of Section 17531 of the Family
34 Code.

35 (17) County child welfare agency personnel who have been
36 delegated the authority of county probation officers to access
37 state summary criminal history information pursuant to Section
38 272 of the Welfare and Institutions Code for the purposes
39 specified in Section 16504.5 of the Welfare and Institutions
40 Code. Information from criminal history records provided

1 pursuant to this subdivision shall not be used for any purposes
2 other than those specified in this section and Section 16504.5 of
3 the Welfare and Institutions Code. When an agency obtains
4 records obtained both on the basis of name checks and
5 fingerprint checks, final placement decisions shall be based only
6 on the records obtained pursuant to the fingerprint check.

7 (c) The Attorney General may furnish state summary criminal
8 history information and, when specifically authorized by this
9 subdivision, federal level criminal history information upon a
10 showing of a compelling need to any of the following, provided
11 that when information is furnished to assist an agency, officer, or
12 official of state or local government, a public utility, or any other
13 entity, in fulfilling employment, certification, or licensing duties,
14 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
15 Labor Code shall apply:

16 (1) Any public utility as defined in Section 216 of the Public
17 Utilities Code that operates a nuclear energy facility when access
18 is needed in order to assist in employing persons to work at the
19 facility, provided that, if the Attorney General supplies the data,
20 he or she shall furnish a copy of the data to the person to whom
21 the data relates.

22 (2) To a peace officer of the state other than those included in
23 subdivision (b).

24 (3) To a peace officer of another country.

25 (4) To public officers (other than peace officers) of the United
26 States, other states, or possessions or territories of the United
27 States, provided that access to records similar to state summary
28 criminal history information is expressly authorized by a statute
29 of the United States, other states, or possessions or territories of
30 the United States if the information is needed for the
31 performance of their official duties.

32 (5) To any person when disclosure is requested by a probation,
33 parole, or peace officer with the consent of the subject of the
34 state summary criminal history information and for purposes of
35 furthering the rehabilitation of the subject.

36 (6) The courts of the United States, other states, or territories
37 or possessions of the United States.

38 (7) Peace officers of the United States, other states, or
39 territories or possessions of the United States.

1 (8) To any individual who is the subject of the record
2 requested if needed in conjunction with an application to enter
3 the United States or any foreign nation.

4 (9) (A) Any public utility as defined in Section 216 of the
5 Public Utilities Code, or any cable corporation as defined in
6 subparagraph (B), if receipt of criminal history information is
7 needed in order to assist in employing current or prospective
8 employees, contract employees, or subcontract employees who,
9 in the course of their employment may be seeking entrance to
10 private residences or adjacent grounds. The information provided
11 shall be limited to the record of convictions and any arrest for
12 which the person is released on bail or on his or her own
13 recognizance pending trial.

14 If the Attorney General supplies the data pursuant to this
15 paragraph, the Attorney General shall furnish a copy of the data
16 to the current or prospective employee to whom the data relates.

17 Any information obtained from the state summary criminal
18 history is confidential and the receiving public utility or cable
19 corporation shall not disclose its contents, other than for the
20 purpose for which it was acquired. The state summary criminal
21 history information in the possession of the public utility or cable
22 corporation and all copies made from it shall be destroyed not
23 more than 30 days after employment or promotion or transfer is
24 denied or granted, except for those cases where a current or
25 prospective employee is out on bail or on his or her own
26 recognizance pending trial, in which case the state summary
27 criminal history information and all copies shall be destroyed not
28 more than 30 days after the case is resolved.

29 A violation of this paragraph is a misdemeanor, and shall give
30 the current or prospective employee who is injured by the
31 violation a cause of action against the public utility or cable
32 corporation to recover damages proximately caused by the
33 violations. Any public utility's or cable corporation's request for
34 state summary criminal history information for purposes of
35 employing current or prospective employees who may be seeking
36 entrance to private residences or adjacent grounds in the course
37 of their employment shall be deemed a "compelling need" as
38 required to be shown in this subdivision.

39 Nothing in this section shall be construed as imposing any duty
40 upon public utilities or cable corporations to request state

1 summary criminal history information on any current or
2 prospective employees.

3 (B) For purposes of this paragraph, “cable corporation” means
4 any corporation or firm that transmits or provides television,
5 computer, or telephone services by cable, digital, fiber optic,
6 satellite, or comparable technology to subscribers for a fee.

7 (C) Requests for federal level criminal history information
8 received by the Department of Justice from entities authorized
9 pursuant to subparagraph (A) shall be forwarded to the Federal
10 Bureau of Investigation by the Department of Justice. Federal
11 level criminal history information received or compiled by the
12 Department of Justice may then be disseminated to the entities
13 referenced in subparagraph (A), as authorized by law.

14 (D) (i) Authority for a cable corporation to request state or
15 federal level criminal history information under this paragraph
16 shall commence July 1, 2005.

17 (ii) Authority for a public utility to request federal level
18 criminal history information under this paragraph shall
19 commence July 1, 2005.

20 (10) To any campus of the California State University or the
21 University of California, or any four-year college or university
22 accredited by a regional accreditation organization approved by
23 the United States Department of Education, if needed in
24 conjunction with an application for admission by a convicted
25 felon to any special education program for convicted felons,
26 including, but not limited to, university alternatives and halfway
27 houses. Only conviction information shall be furnished. The
28 college or university may require the convicted felon to be
29 fingerprinted, and any inquiry to the department under this
30 section shall include the convicted felon’s fingerprints and any
31 other information specified by the department.

32 (d) Whenever an authorized request for state summary
33 criminal history information pertains to a person whose
34 fingerprints are on file with the Department of Justice and the
35 department has no criminal history of that person, and the
36 information is to be used for employment, licensing, or
37 certification purposes, the fingerprint card accompanying the
38 request for information, if any, may be stamped “no criminal
39 record” and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

1 (j) The state summary criminal history information shall
2 include any finding of mental incompetence pursuant to Chapter
3 6 (commencing with Section 1367) of Title 10 of Part 2 arising
4 out of a complaint charging a felony offense specified in Section
5 290.

6 (k) (1) This subdivision shall apply whenever state or federal
7 summary criminal history information is furnished by the
8 Department of Justice as the result of an application by an
9 authorized agency or organization and the information is to be
10 used for peace officer employment or certification purposes. As
11 used in this subdivision, a peace officer is defined in Chapter 4.5
12 (commencing with Section 830) of Title 3 of Part 2.

13 (2) Notwithstanding any other provision of law, whenever
14 state summary criminal history information is furnished pursuant
15 to paragraph (1), the Department of Justice shall disseminate the
16 following information:

17 (A) Every conviction rendered against the applicant.

18 (B) Every arrest for an offense for which the applicant is
19 presently awaiting trial, whether the applicant is incarcerated or
20 has been released on bail or on his or her own recognizance
21 pending trial.

22 (C) Every arrest or detention, except for an arrest or detention
23 resulting in an exoneration, provided however that where the
24 records of the Department of Justice do not contain a disposition
25 for the arrest, the Department of Justice first makes a genuine
26 effort to determine the disposition of the arrest.

27 (D) Every successful diversion.

28 (l) (1) This subdivision shall apply whenever state or federal
29 summary criminal history information is furnished by the
30 Department of Justice as the result of an application by a criminal
31 justice agency or organization as defined in Section 13101 of the
32 Penal Code, and the information is to be used for criminal justice
33 employment, licensing, or certification purposes.

34 (2) Notwithstanding any other provision of law, whenever
35 state summary criminal history information is furnished pursuant
36 to paragraph (1), the Department of Justice shall disseminate the
37 following information:

38 (A) Every conviction rendered against the applicant.

39 (B) Every arrest for an offense for which the applicant is
40 presently awaiting trial, whether the applicant is incarcerated or

1 has been released on bail or on his or her own recognizance
2 pending trial.

3 (C) Every arrest for an offense for which the records of the
4 Department of Justice do not contain a disposition or did not
5 result in a conviction, provided that the Department of Justice
6 first makes a genuine effort to determine the disposition of the
7 arrest. However, information concerning an arrest shall not be
8 disclosed if the records of the Department of Justice indicate or if
9 the genuine effort reveals that the subject was exonerated,
10 successfully completed a diversion or deferred entry of judgment
11 program, or the arrest was deemed a detention.

12 (m) (1) This subdivision shall apply whenever state or federal
13 summary criminal history information is furnished by the
14 Department of Justice as the result of an application by an
15 authorized agency or organization pursuant to Section 1522,
16 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
17 any statute that incorporates the criteria of any of those sections
18 or this subdivision by reference, and the information is to be used
19 for employment, licensing, or certification purposes.

20 (2) Notwithstanding any other provision of law, whenever
21 state summary criminal history information is furnished pursuant
22 to paragraph (1), the Department of Justice shall disseminate the
23 following information:

24 (A) Every conviction of an offense rendered against the
25 applicant.

26 (B) Every arrest for an offense for which the applicant is
27 presently awaiting trial, whether the applicant is incarcerated or
28 has been released on bail or on his or her own recognizance
29 pending trial.

30 (C) Every arrest for an offense for which the Department of
31 Social Services is required by paragraph (1) of subdivision (a) of
32 Section 1522 of the Health and Safety Code to determine if an
33 applicant has been arrested. However, if the records of the
34 Department of Justice do not contain a disposition for an arrest,
35 the Department of Justice shall first make a genuine effort to
36 determine the disposition of the arrest.

37 (3) Notwithstanding the requirements of the sections
38 referenced in paragraph (1) of this subdivision, the Department
39 of Justice shall not disseminate information about an arrest
40 subsequently deemed a detention or an arrest that resulted in

1 either the successful completion of a diversion program or
2 exoneration.

3 (n) (1) This subdivision shall apply whenever state or federal
4 summary criminal history information, to be used for
5 employment, licensing, or certification purposes, is furnished by
6 the Department of Justice as the result of an application by an
7 authorized agency, organization, or individual pursuant to any of
8 the following:

9 (A) Paragraph (9) of subdivision (c), when the information is
10 to be used by a cable corporation.

11 (B) Section 11105.3 or 11105.4.

12 (C) Section 15660 of the Welfare and Institutions Code.

13 (D) Any statute that incorporates the criteria of any of the
14 statutory provisions listed in subparagraph (A), (B), or (C), or of
15 this subdivision, by reference.

16 (2) With the exception of applications submitted by
17 transportation companies authorized pursuant to Section 11105.3,
18 and notwithstanding any other provision of law, whenever state
19 summary criminal history information is furnished pursuant to
20 paragraph (1), the Department of Justice shall disseminate the
21 following information:

22 (A) Every conviction rendered against the applicant for a
23 violation or attempted violation of any offense specified in
24 subdivision (a) of Section 15660 of the Welfare and Institutions
25 Code. However, with the exception of those offenses for which
26 registration is required pursuant to Section 290, the Department
27 of Justice shall not disseminate information pursuant to this
28 subdivision unless the conviction occurred within 10 years of the
29 date of the agency's request for information or the conviction is
30 over 10 years old but the subject of the request was incarcerated
31 within 10 years of the agency's request for information.

32 (B) Every arrest for a violation or attempted violation of an
33 offense specified in subdivision (a) of Section 15660 of the
34 Welfare and Institutions Code for which the applicant is
35 presently awaiting trial, whether the applicant is incarcerated or
36 has been released on bail or on his or her own recognizance
37 pending trial.

38 (o) (1) This subdivision shall apply whenever state or federal
39 summary criminal history information is furnished by the
40 Department of Justice as the result of an application by an

1 authorized agency or organization pursuant to Section 261 or
2 777.5 of the Financial Code, or any statute that incorporates the
3 criteria of either of those sections or this subdivision by
4 reference, and the information is to be used for employment,
5 licensing, or certification purposes.

6 (2) Notwithstanding any other provision of law, whenever
7 state summary criminal history information is furnished pursuant
8 to paragraph (1), the Department of Justice shall disseminate the
9 following information:

10 (A) Every conviction rendered against the applicant for a
11 violation or attempted violation of any offense specified in
12 Section 777.5 of the Financial Code.

13 (B) Every arrest for a violation or attempted violation of an
14 offense specified in Section 777.5 of the Financial Code for
15 which the applicant is presently awaiting trial, whether the
16 applicant is incarcerated or has been released on bail or on his or
17 her own recognizance pending trial.

18 (p) (1) This subdivision shall apply whenever state or federal
19 criminal history information is furnished by the Department of
20 Justice as the result of an application by an agency, organization,
21 or individual not defined in subdivision (k), (l), (m), (n), or (o),
22 or by a transportation company authorized pursuant to Section
23 11105.3, or any statute that incorporates the criteria of that
24 section or this subdivision by reference, and the information is to
25 be used for employment, licensing, or certification purposes.

26 (2) Notwithstanding any other provisions of law, whenever
27 state summary criminal history information is furnished pursuant
28 to paragraph (1), the Department of Justice shall disseminate the
29 following information:

30 (A) Every conviction rendered against the applicant.

31 (B) Every arrest for an offense for which the applicant is
32 presently awaiting trial, whether the applicant is incarcerated or
33 has been released on bail or on his or her own recognizance
34 pending trial.

35 (q) All agencies, organizations, or individuals defined in
36 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
37 Department of Justice for subsequent arrest notification pursuant
38 to Section 11105.2. This subdivision shall not supersede sections
39 that mandate an agency, organization, or individual to contract

1 with the Department of Justice for subsequent arrest notification
2 pursuant to Section 11105.2.

3 (r) Nothing in this section shall be construed to mean that the
4 Department of Justice shall cease compliance with any other
5 statutory notification requirements.

6 (s) The provisions of Section 50.12 of Title 28 of the Code of
7 Federal Regulations are to be followed in processing federal
8 criminal history information.

9 *SEC. 3. This act is an urgency statute necessary for the*
10 *immediate preservation of the public peace, health, or safety*
11 *within the meaning of Article IV of the Constitution and shall go*
12 *into immediate effect. The facts constituting the necessity are:*

13 *In order to implement a pending federal court settlement in the*
14 *case of Valdivia v. Schwarzenegger, and to ensure that due*
15 *process is afforded to parolees during parole revocation*
16 *hearings, it is necessary that this act take effect immediately.*